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**ORIGINAL**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**JOHN D. PERKEY and  
THERESA M. PERKEY**  
Plaintiffs

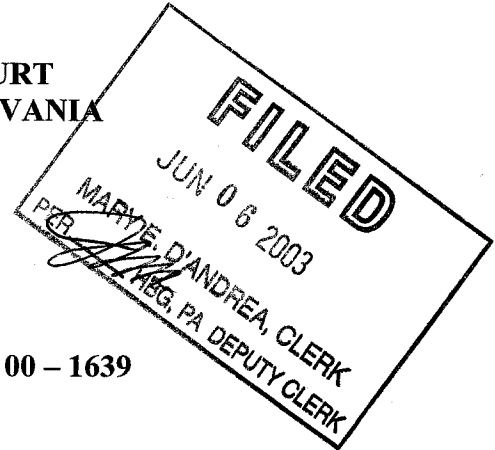
vs.

**RELIABLE CARRIERS, INC.,  
DANIEL JOSEPH BEMBEN,  
and KENT,**  
Defendants

Civil Action  
Number 1: CV – 00 – 1639

Jury Trial Demanded

Magistrate Judge Smyser



**BRIEF OF JOHN D. PERKEY AND THERESA M. PERKEY  
IN OPPOSITION TO MOTION IN LIMINE TO EXCLUDE THE TESTIMONY OF  
PLAINTIFFS' EXPERT ROGER H. OSTDAHL, M.D.**

**A. Procedural History and Facts:**

The Plaintiff, John D. Perkey, was injured in an accident on the Pennsylvania Turnpike on September 15, 1998, when the rear wheels of the Defendant's tractor became dislodged and struck the tractor and trailer driven by the Plaintiff, John D. Perkey.

A Complaint was filed by the Plaintiffs, John D. Perkey and Theresa M. Perkey on September 14, 2000. The Defendant has filed an Answer with certain Affirmative Defenses on January 29, 2001. The parties are now completing their preparation for trial. The Plaintiffs have been served with a Motion in Limine seeking to exclude the testimony of the Plaintiffs' expert, Roger H. Ostdahl, M.D. The Plaintiffs now file this brief in opposition to Defendants' Motion in Limine regarding the testimony of Dr. Ostdahl.

**B. Issue:**

Whether Plaintiff's medical expert Roger H. Ostdahl, M.D.'s testimony should be allowed since he testified with a reasonable degree of medical certainty?

**Suggested Answer:** Yes

**C. Argument:**

Roger H. Ostdahl, M.D. was one of the treating physicians of John D. Perkey. His testimony regarding his treatment of John Perkey is certainly admissible. The Superior Court of Pennsylvania recently reversed a trial court which had excluded expert testimony in **Kovach v. Central Trucking, Inc., 2002 Pa Super 313, 808 A.2d 958 (2002)**. The court, in its opinion by President Judge Del Sole, stated that when taken as a whole the physician's testimony reflected the necessary medical certainty needed for admissibility. **Id. at 960**. The Defendants have not specifically sought to limit his testimony but seek to exclude it in its entirety. Dr. Ostdahl's deposition was taken for use at trial only if he were unavailable to testify in person. When taken as a whole he is permitted to testify about his treatment of the Plaintiff, John D. Perkey. It is for the jury to assess the weight of testimony. **Cohen v. Albert Einstein Medical Center, N. Div., 405 Pa. Super 392, 399-400, 592 A.2d 720, 723-24 (1991)**.

**D. Conclusion:**

The testimony of Roger H. Ost Dahl, M.D. is admissible, and it should be admitted at trial so that the jury may weigh and assess it.

Respectfully submitted,

**IRWIN, McKNIGHT & HUGHES**

A handwritten signature in black ink, appearing to read 'M. McKnight, III', is written over a horizontal line.

**Marcus A. McKnight, III, Esquire**

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John D. Perkey

Date: June 6, 2003

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**JOHN D. PERKEY and  
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## Plaintiffs

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## CERTIFICATE OF SERVICE

I, Marcus A. McKnight, III, Esquire, hereby certify that a copy of attached Brief was served upon the following by depositing a true and correct copy of the same in the United States mail, First Class, postage prepaid in Carlisle, Pennsylvania, on the date referenced below and addressed as follows:

E. Ralph Godfrey, Esquire  
Godfrey & Courtney, P.C.  
P.O. Box 6280  
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**IRWIN, McKNIGHT & HUGHES**

By:

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Supreme Court L.D. No. 25476

Date: June 6, 2003